IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10125 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORBHAI RANCHHODBHAI PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR EE SAIYED for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/03/2007

ORAL JUDGMENT

1. Shri E.E. Saiyed, learned counsel for the petitioners; Shri R.C. Kodekar, learned AGP for the respondents.

2. The petitioners being aggrieved by the order dated 8.9.95 passed in Case No. Tenancy Revision/4/94 by the learned Deputy Collector, Choryasi Prant, Surat, directing that possession of the land of survey no. 255 be resumed by the State for its management for a period of ten years, filed an appeal before the Collector, but the Collector refused to receive the same directing inter alia that against such an order, Collector had neither revisional nor appellate jurisdiction, petitioners are now before this Court. Shri Saiyed, learned counsel for the petitioners submits that proper opportunity of hearing was not afforded to the petitioners, no inquiry was made and the authorities were unjustified in holding that there was breach of provisions of Section 65 of the Bombay Tenancy & Agricultural Lands Act, 1948. His further submission is that even if there was some breach on the part of the petitioners, then too, maximum penalty of ten years could not be imposed and the State could not resume possession for managing the land.

3. Shri R.C. Kodekar, learned AGP for the State, on the other hand, has contested the petition by submitting that on proper recommendation by the Mamlatdar to the Deputy Collector, a case was registered, notice to show cause was issued, but the petitioners did not file heir reply nor did they lead any evidence. He submits that present is a case where authority has recorded a finding of fact that the land remained uncultivated and fallow for a period of almost about 20 years. In relation to resumption of the land for ten years, he submits that if the law permits to take land for ten years, then, the authorities were entitled to pass such order.

4. From the records, it clearly appears that the recommendations were made by the Mamlatdar and thereafter, a case was registered. On 17.6.94, a notice to show cause was issued and the case was listed on 18.7.94. The matter was to be finally heard on 9.1.95, but unfortunately, the petitioners did not remain in attendance. If the petitioners did not file reply to the notice nor did they lead any evidence nor appeared before

the Deputy Collector, then, wrong would be on their part. The authorities could not compel the petitioners to file their reply or remain in attendance. Law simply requires that a notice to show cause be issued before passing a final order and such requirement of law was complied with by the authority.

5. Section 65 of the Bombay Tenancy & Agricultural Lands Act, 1948 provides that if the State Government is satisfied that for any two consecutive years any land has remained uncultivable or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control, the State Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. To such declaration finality and conclusiveness has been attached. Sub-section [1A] of Section 65 provides that in case of non-user of the land for agriculture/cultivation, the State may fix the period which shall not exceed ten years in

the aggregate. Sub-section [1A] clearly provides a discretion in favour of the authority which has to direct assumption of management of the land which remains uncultivated. The moment, discretion is reserved in favour of an authority, then, the authority is required to consider all pros and cons of the matter and after appreciating the things in their true perspective, has to pass an order. An authority, which can exercise its discretion, cannot have a blind-fold and pass a final order. The authority is required to give the reasons for awarding maximum penalty or for providing full term. In the present case, immediately after recording that the land remained fallow for a period of 20 years, the Deputy Collector observed that possession of the land be taken for a period of ten years. The Deputy Collector did nowhere say as to why the said period has been fixed. When the discretion is to be exercised, then, the authority must come out of its self and put itself into the place of an ordinary man, assess the realities of the life and only then, after

taking into consideration the facts and circumstances of the case, pass an order. Assumption of management of the land is, in fact a penal provision, it deprives an owner/person in possession of his valuable right over the property.

6. After going through the entirety of the case and attending circumstances, I am of the opinion that present is a fit case where this Court could exercise its discretion in reducing the period of ten years to two years only. On the merits relating to the ground for assumption, I am unable to interfere in the matter. I hereby direct that the land would be assumed by the Government for a period of two years only. The petition to the extent indicated above is allowed. Rule is made absolute to the aforesaid extent. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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